

Notice 90-66

1990-2 C.B. 350

Section 129 Notice on Fair Market Value

November 5, 1990

Notice 89-111, 1989-2 C.B. 449, provides guidance concerning the reporting requirements for dependent care assistance furnished by an employer to an employee under a qualified dependent care assistance program described in section 129 of the Internal Revenue Code of 1986. Notice 89-111 includes a safe harbor rule for computing the fair market value of in-kind dependent care assistance provided by an employer to an employee. The safe harbor was available only for calendar year 1989. This notice extends the safe harbor rule in Notice 89-111. Therefore, until further guidance is issued, an employer is permitted, but is not required, to use the safe harbor rule set forth in Notice 89-111 for years following 1989. Beginning in 1990, dependent care assistance will be reported in Box 15 of Form W-2, Wage and Tax Statement. Other provisions of Notice 89-111 continue in effect without modification.

The principal author of this notice is Monice Rosenbaum of the Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this notice, contact Ms. Rosenbaum on (202) 566-3505 (not a toll-free call).

Notice 89-111

1989-2 C.B. 449

Reporting Dependent Care Assistance

December 4, 1989

This notice provides guidance with respect to the reporting requirements imposed under section 129(d)(6) and 6051(a)(9) of the Internal Revenue Code of 1986 (the "Code") regarding the amount of dependent care assistance furnished by an employer to an employee under a qualified dependent care assistance program described in section 129 of the Code.

Section 129(d)(6) of the Code requires a dependent care assistance program to furnish a written statement to the employee showing the amounts paid or expenses incurred by the employer in providing dependent care assistance to the employee during the calendar year. Similarly, section 6051(a)(9) of the Code requires the employer to provide a written statement to the employee showing the total amount incurred for dependent care assistance with respect to the employee under a dependent care assistance program described in section 129 of the Code.

Sections 129(d)(6) and 6051(a)(9) are both satisfied by reporting the amount of dependent care assistance in Box 16 of Form W-2, Wage and Tax Statement. The amount of dependent care assistance reported in Box 16 on Form W-2 should be separately identified by labeling the amount "DCB."

In the case of a qualified dependent care assistance program that is a cash reimbursement arrangement, the amount reported in Box 16 of Form W-2 is the total amount of case reimbursement provided by the employer to the employee for dependent care assistance covered under the program that was furnished to the employee during the calendar year. This includes reimbursement after the end of the year for assistance provided during the year. If the employer does not know the actual total amount of such cash reimbursement at the time the Form W-2 is prepared, the employer may

report a reasonable estimate of the total amount on the Form W-2. For this purpose, in the case of a cash reimbursement arrangement that is a part of a salary reduction arrangement under a cafeteria plan described in section 125 of the Code, the amount electively contributed by an employee for the year for dependent care assistance under the program (plus any employer matching contributions attributable thereto) shall be considered a reasonable estimate.

In the case of a qualified dependent care assistance program under which the employer provides dependent care assistance in-kind, for example, through an on-site day care facility, the amount reported in Box 16 of Form W-2 is the fair market value of the dependent care assistance provided by the employer to the employee during the calendar year under the program (less the amount, if any, the employee has paid during the year on an after-tax basis for such assistance). For this purpose, fair market value shall mean the employer's reasonable estimate of the amount an employee would pay in an arm's-length transaction for dependent care assistance of the type and quality actually furnished by the employer to the employee. In the case of an in-kind program that is part of a salary reduction arrangement under a cafeteria plan described in section 125 of the Code, the amount electively contributed by the employee for the calendar year for dependent care assistance under the program (plus any employer matching contributions attributable thereto) may be reported in Box 16 of Form W-2, only if such amount is the fair market value of the dependent care assistance provided by the employer to the employee. If not, the amount reported in Box 16 shall be the fair market value of such assistance.

For Form W-2 reporting purposes for calendar year 1989, an employer is permitted, but is not required, to estimate the fair market value of in-kind dependent care assistance provided to an employee of 125 percent of reasonably estimated direct costs. For this purpose, direct costs are food, expendable materials and supplies, transportation, staff training, special or additional insurance directly attributable to the day care facility, periodic consulting or management fees directly related to the operation of the day care facility, and the cost of labor for personnel whose services relating to the facility are performed primarily on the premises of the day care facility. (See § 1.132-7(b)(1) of the regulations for guidance on how to determine the cost of labor. See § 1.132-7(b)(3) of the regulations for guidance on how to determine direct costs when the employer has contracted with an unrelated party to operate all or a portion of the facility.) The result of 125 percent of direct costs is divided by the total number of dependents the facility is permitted to care for (capacity) and divided further by the number of days the facility is open. The result is the deemed daily cost per dependent at the facility. This result is then multiplied by the number of days that each dependent of the employee made use of the facility in order to determine the deemed fair market value of the in-kind dependent care assistance provided by the employer to the employee during the year. (At its option, the employer may adjust the preceding calculations to take into account the fact that individual dependents make use of the facility for only a portion of the full working day.) The Service invites taxpayer comments on this safe harbor rule for determining fair market value of in-kind dependent care assistance and whether additional safe harbor rules would be appropriate (such as a single per day value for use by all employers). Comments should be mailed by March 5, 1990, to: Commissioner of Internal Revenue, Attention: CC:EE:5 (E:45-40-89), Room 5229, Washington, D.C. 20224.

If an employee receives benefits under two or more qualified dependent care assistance programs maintained by the employer (or different types of dependent care assistance benefits under the same program), the amount reported in Box 16 of Form W-2 shall be the sum of the amounts attributable to the total benefits provided to the employee under all such programs of the employer.

This document serves as an "administrative pronouncement" as that term is described in section 1.6661-3(b)(2) of the Income Tax Regulations, and may be relied upon to the same extent as a revenue ruling or revenue procedure.

#### DRAFTING INFORMATION

The principal author of this notice is Monice Rosenbaum of the Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this notice, contact Ms. Rosenbaum on (202) 566-3505 (not a toll-free call).

Notice 89-71

1989-1 C.B. 738

### Furnishing Identification of Dependent Care Providers

June 26, 1989

This notice provides guidance on the new reporting requirements for taxpayers claiming the dependent care credit under section 21 of the Internal Revenue Code or taking the dependent care exclusion under section 129 of the Code.

Section 703(c) of the Family Support Act of 1988 (the Act), Pub. L. No. 100-485, amended sections 21 and 129 of the Code to require taxpayers claiming the credit for dependent care expenses under section 21, or taking the exclusion pursuant to a dependent care assistance program under section 129, to furnish the Internal Revenue Service (Service) with the name, address, and taxpayer identification number (TIN) of the care provider. (For individuals, their TIN is their social security number. For other entities, generally, their TIN is their employer identification number.) In the case of a care provider that is an organization described in section 501(c)(3) and exempt from tax under section 501(a), the taxpayer claiming such a credit or taking such an exclusion is required to furnish only the name and address of the care provider.

Act section 703(c) also amended section 6109(a)(2) of the Code to require care providers to furnish their TINs to taxpayers who need the TINs in order to claim the credit under section 21 or to take the exclusion under section 129. A care provider who fails to comply with this requirement is subject to a penalty under section 6676 of \$50 for each such failure, unless the failure is due to reasonable cause and not to willful neglect. Care providers that are organizations described in section 501(c)(3) and exempt from tax under section 501(a) do not have to furnish TINs to taxpayers.

Taxpayers claiming the credit under section 21 of the Code or taking the exclusion under section 129 must furnish the required information on the federal income tax return on which the credit is claimed or to which the credit is claimed or to which the exclusion relates. Form 2441, Credit for Child and Dependent Care Expenses (filed with Form 1040), and Part I of Schedule 1, Credit for Child and Dependent Care Expenses, (filed with Form 1040A), will be retitled and revised to provide space and instructions for taxpayers claiming the credit or taking the exclusion to furnish the required information. In the case of a care provider that is an organization described in section 501(c)(3) and exempt from tax under section 501(a), taxpayers must write "tax-exempt" in the space in which the TIN of the care provider generally would be reported.

These new requirements are effective for taxable years beginning after December 31, 1988. Thus, taxpayers claiming the credit or taking the exclusion generally must furnish the required information on their federal income tax returns for 1989 and subsequent years (that is, beginning with returns due by April 16, 1990).

Taxpayers who do not furnish correct or complete information will not be allowed the dependent care credit or exclusion unless, upon the Service's request, they show that they exercised due diligence in attempting to furnish the required information. Any one of the following documents may be used to show that a taxpayer exercised due diligence in attempting to furnish the required information, unless the taxpayer knows or has reason to know that the information on the document is incorrect:

1. A completed Form W-10, Dependent Care Provider's Identification and Certification;
2. A copy of the care provider's social security card or driver's license (in a state where the license includes the social security number);
3. A recently printed letterhead or printed invoice of the care provider that contains the required information;
4. If the care provider is the taxpayer's household employee and has given the taxpayer a completed Form W-4, Employee's Withholding Allowance Certificate, a copy of that W-4; and

5. If the employer is the care provider in the case of a section 129 program, a copy of the statement furnished to the employee under section 129(d)(6) of the Code that contains the required information.

Taxpayers should request the required information from the care provider. In cases where the care provider does not comply with such a request, taxpayers should furnish whatever information they have (that is, a name, an address, and, if known and required, a TIN of the care provider) on the Form 2441 or Schedule 1 (whichever is applicable) Taxpayers should then include a statement on the Form 2441 or Schedule 1 (whichever is applicable) that they requested the required information from the care provider, and that the care provider did not comply with the request. This statement will show that the taxpayer exercised due diligence in attempting to furnish the required information, unless the taxpayer knows or has reason to know that the statement is incorrect.

This document serves as an "administrative pronouncement" as that term is described in section 1.6661-3(b)(2) of the Income Tax Regulations, and may be relied upon to the same extent as a revenue ruling or revenue procedure.

#### DRAFTING INFORMATION

The principal author of this notice is Joel S. Rutstein of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Mr. Rutstein on (202) 566-4509 (not a toll-free call).